

DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-219999.2

DATE: September 6, 1985

MATTER OF: Aviation Contractor Employees, Inc.--
Request for Reconsideration

DIGEST:

Prior dismissal of protest concerning low bidders' ability to perform satisfactorily under below-cost bids is affirmed since protest involves a challenge to affirmative determinations of responsibility which GAO generally will not review. Although GAO will review such protests where bidders' compliance with definitive responsibility criteria is challenged, there is no support for the protester's contention on reconsideration that the solicitation at issue contains definitive responsibility criteria.

Aviation Contractor Employees, Inc. (ACE) requests reconsideration of our decision to dismiss its original protest, B-219999, filed on August 22, 1985. ACE's protest challenged award to any other bidder under solicitation No. DABT01-85-B-3003, issued by the Army for rotary wing flight training at Fort Rucker, Alabama. We affirm the prior dismissal.

In its original protest, ACE contended that the bid prices of the four lower bidders were too low to allow them to perform satisfactorily. Briefly, ACE maintained that their bid prices were below the actual costs of employee compensation which the successful contractor would be required to incur pursuant to the collective bargaining agreement in force.

We dismissed the protest because in effect ACE challenged any affirmative determination of responsibility which the Army might make regarding the lower bidders, a matter which we will not review absent a showing that the contracting officer may have acted fraudulent or in bad faith, or that definitive responsibility criteria in the solicitation have not been met. Bid Protest Regulations, 4 C.F.R. § 21.3(f)(5) (1985); Freund Precision, Inc.--
Reconsideration, B-216620.2, Jan. 4, 1985, 85-1 CPD ¶ 19.

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Neither exception was alleged in ACE's initial protest. In any event, the submission or acceptance of a below-cost bid, standing alone, is not improper, assuming the offeror is found responsible, although contracting officers are expected to take appropriate action to ensure that the contractor does not recover any resultant losses through change orders or otherwise. Wall Colmonoy Corp., B-217361, Jan. 8, 1985, 85-1 CPD ¶ 27.

In its request for reconsideration, ACE characterizes its original protest as a challenge to whether below-cost bidders comply with definitive responsibility criteria in the solicitation. A definitive responsibility criterion is an objective standard of responsibility, such as a particular level of specific experience, that a bidder must possess as a prerequisite to award. Bay Decking Co., Inc., B-216248, Jan. 22, 1985, 85-1 CPD ¶ 77. Here, the solicitation required only that bidders submit bid prices based on various functions to be performed under the solicitation. ACE offers no support for its contention that the solicitation contains definitive responsibility criteria, and we see no basis on which to conclude that it does.

The prior decision is affirmed.

for *Signature* *Efuro*
Harry R. Van Cleve
General Counsel